

NONPRECEDENTIAL

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

DAVID URGENT,)	
)	
Plaintiff)	
)	
v.)	
)	CIVIL NO. 2002-0115
AMAZON HOSPITALITY, INC., d/b/a)	
HOLIDAY INN EXPRESS EAGLE PASS)	
)	
Defendant)	
_____)	

MEMORANDUM OPINION

Finch, Chief Judge

This matter is before the Court on the motion of Defendant Amazon Hospitality, Inc. d/b/a Holiday Inn Express Eagle Pass to dismiss. Defendant asks the Court to dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction. Plaintiff opposes Defendant's motion. Defendant has filed a reply to Plaintiff's Opposition. The Court scheduled a hearing on this matter for July 9, 2004. Because Plaintiff did not appear at the hearing, the Court chose not to entertain oral argument at the hearing and will decide this motion on the briefs submitted by both parties.

I. Background

On July 29, 2002, Plaintiff slipped and fell on a wet floor while he was a guest at the Holiday Inn Express Eagle Pass in Eagle Pass, Texas. (Plaintiff's First Amended Complaint ¶¶ 4, 6.) Plaintiff brought this lawsuit claiming that he was a business invitee of Defendant at the

time of the accident and that Defendant's premises were unsafe partly due to the front door being left open while it was raining outside and a wet rug at the doorway. (Plaintiff's First Amended Complaint ¶¶ 5 - 6.) Plaintiff asserts that Defendant failed to properly inspect/maintain its premises and failed to warn Plaintiff of the unsafe condition. Plaintiff claims that Defendant's negligence directly and proximately caused Plaintiff to suffer physical, emotional, and economic injuries. Plaintiff seeks damages, costs, and fees. Defendant brings the instant motion asking the Court to dismiss Plaintiff's Complaint on the basis that the Court lacks personal jurisdiction over Defendant Amazon Hospitality, Inc. d/b/a Holiday Inn Express Eagle Pass.

II. Analysis

A. Standard for Personal Jurisdiction

When a federal court sits in diversity, its exercise of personal jurisdiction over a non-resident defendant pursuant to Fed. R. Civ. P. 4(e) must comport with the long-arm statute of the forum and with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. In re Tutu Wells, 846 F. Supp. 1243, 1264 (D.V.I. 1993). It is a plaintiff's burden to establish by a preponderance of the evidence that such personal jurisdiction is proper. Id. (citing Patterson By Patterson v. F.B.I., 893 F.2d 595, 604 (3d Cir. 1989), cert. denied, 498 U.S. 812 (1990)). Although the Court must initially consider all allegations of jurisdictional facts in a light most favorable to an assertion of personal jurisdiction, this presumption may be overcome upon a hearing on the motion. Id.

Plaintiff asserts that this Court has jurisdiction based on the Virgin Islands long-arm statute, 5 V.I.C. §§ 4901-4905. (Plaintiff's Opposition at 9.) That statute has been interpreted as

extending jurisdiction over non-residents to the uttermost limits permitted under the United States Constitution. Godfrey v. International Moving Consultants, Inc., 18 V.I. 60, 66 (D.V.I. 1980); Hendrickson v. Reg O Co., 17 V.I. 457 (D.V.I. 1980); Buccaneer Hotel Corp. v. Reliance International Sale Corp., 17 V.I. 249, 254 (Terr. Ct. 1981). Therefore, in applying the Virgin Islands long-arm statute, the Court's in personam jurisdiction is limited only by its own terms and by the Due Process Clause of the Fourteenth Amendment to the Constitution. See Carson v. Skandia Ins. Co., 19 V.I. 138 (D.V.I. 1982).

The relevant provision of the Virgin Islands long-arm statute, 5 V.I.C. § 4903, provides:

- (a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's
 - (1) transacting any business in this territory;
 - (2) contracting to supply services or things in this territory;
 - (3) causing tortious injury by an act or omission in this territory;
 - (4) causing tortious injury in this territory by an act or omission outside this territory if he regularly does or solicits business, or engaged in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this territory;
 - (5) having an interest in, using, or possessing real property in this territory; or
 - (6) contracting to insure any person, property, or risk located within this territory at the time of contract;
 - (7) causing a woman to conceive a child, or conceiving or giving birth to a child in the territory; or
 - (8) abandoning a minor in this territory.
- (b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

5 V.I.C. § 4903.

In addition to the language of the statute, the analysis for determining whether personal jurisdiction exists in this Court turns on the constitutional issue of whether Defendant has established "minimum contacts with [the USVI] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v.

Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

“[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Hanson v. Denckla, 357 U.S. 235, 253 (1958). Such activities need not involve physical presence in the state, but must still be purposefully directed toward the state. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 - 76 (1985).

When a plaintiff's cause of action arises from the defendant's contacts with the forum state, the district court may have jurisdiction for the claim based on the “relationship among the defendant, the forum, and the litigation.” Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414 (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). The contacts related to the cause of action must create a “substantial connection” with the forum state. See McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957). The defendant's actions must be directed at the forum state in more than a random, fortuitous, or attenuated way. See Burger King, 471 U.S. at 475.

It is clear that 5 V.I.C. § 4903 establishes personal jurisdiction only where the claim arises from one of the acts enumerated in that section. In the instant case, no contract existed to supply services in the USVI (5 V.I.C. § 4903(a)(2)). There has been no evidence to suggest that an act in this territory caused the subject slip and fall accident to occur in Texas (5 V.I.C. § 4903(a)(3)). Additionally, it is uncontested that no tortious injury occurred in the USVI (5 V.I.C. § 4903(a)(4)). Furthermore, subsections (5), (6), (7), and (8) of 5 V.I.C. § 4903(a) are inapplicable. However, Plaintiff asserts that the Court has personal jurisdiction over Defendant because Defendant transacted business in the Virgin Islands (5 V.I.C. § 4903(a)(1)). (Plaintiff's

Opposition at 11.)

B. Personal Jurisdiction Pursuant to 5 V.I.C. § 4903(a)(1)

Plaintiff states that Defendant is a franchisee of Holiday Inn and is a licensee of Holiday Hospitality. (Plaintiff's Opposition at 8; Plaintiff's Exhibit 1.) According to Plaintiff, Defendant is involved in Holiday Hospitality's marketing, reservation service, advertising, training and operating programs that benefit Holiday Inn's across the nation and Defendant pays a fee to Holiday Hospitality each month for such activities. (Plaintiff's Opposition at 8; Plaintiff's Exhibits 1, 3.) Defendant disagrees with Plaintiff's contentions and accuses Plaintiff of having drawn false conclusions from the licensing agreement between Defendant and Holiday Hospitality Franchising, Inc. (Defendant's Reply at 10 - 11.)

Plaintiff points out that the toll-free, worldwide telephone number for Holiday Inn was advertised in the 2000 and 2003 Virgin Islands telephone directories, and that a reservation for Holiday Inn Express Eagle Pass can be made by calling this telephone number. (Plaintiff's Opposition at 8 - 9; Plaintiff's Exhibits 3, 4.) Plaintiff argues that because Defendant advertises in the Virgin Islands, it would be foreseeable to Defendant that Virgin Islands residents would stay at the Holiday Inn Express Eagle Pass in Texas. (Plaintiff's Opposition at 9.) Defendant responds that the advertising that Plaintiff refers to was not undertaken by Defendant. (Defendant's Reply at 8.) Defendant further counters that while the toll-free number may assist Plaintiff in establishing personal jurisdiction over the Holiday Inn corporation, it does not apply to Defendant and that the phone number specific for Defendant is not listed in the Virgin Islands phone book. (Defendant's Reply at 9.)

III. Conclusion

The connection between Defendant and the Virgin Islands is tenuous at best. The slip and fall incident took place in July 2002. Even if this Court agreed with Plaintiff that advertising alone was sufficient for transacting business in this territory, Plaintiff has presented no evidence that Defendant advertised in the Virgin Islands phone book in 2001 or 2002. In fact, it is disputed whether Defendant has ever advertised in the Virgin Islands. Allowing Plaintiff to hail Defendant into this Court because the Holiday Inn Corporation advertised its toll-free, worldwide number in the Virgin Islands phone book over two years before this accident occurred would hardly be comporting with traditional notions of fair play and substantial justice. For the foregoing reasons, Defendant's motion will be granted. An appropriate Order is attached.

ENTER:

Dated: July 9, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:

Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Hon. George W. Cannon
Lee J. Rohn, Esq.
Yvette D. Ross-Edwards, Esq.

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HOLIDAY INN EXPRESS EAGLE PASS)	
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Defendant)	
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ORDER

THIS MATTER is before the Court on Defendant Amazon Hospitality, Inc. d/b/a Holiday Inn Express Eagle Pass' Motion to Dismiss for Lack of Personal Jurisdiction, docket item # 42. Defendant asks the Court to dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(2). In accordance with the attached Memorandum Opinion, it is hereby

ORDERED that Defendant's Motion to Dismiss for Lack of Personal Jurisdiction is **GRANTED**. It is further

ORDERED that Plaintiff's Complaint shall be and is hereby **DISMISSED WITHOUT PREJUDICE**. It is further

ORDERED that Civil No. 2002-0115 is **CLOSED** as to all parties.

ENTER:

Dated: July 9, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:

Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Hon. George W. Cannon
Lee J. Rohn, Esq.
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